

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Hearing: October 11, 2018
Time: 9:30 AM
**FILED
BANKRUPTCY COURT**

2018 SEP 27 P 4: 53

S.D. OF N.Y.

In re Carmine P. Amelio

Case No. 17-12482-cgm

Debtor.

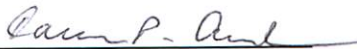
**NOTICE OF DEBTOR'S THIRD MOTION FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 CASE PURSUANT TO 11 U.S.C. 1307(b) OR FIRST MOTION FOR
VOLUNTARY DISMISSAL OF INVOLUNTARY CHAPTER 7 CASE
PURSUANT TO 11 U.S.C. 707(a)**

PLEASE TAKE NOTICE, that Carmine P. Amelio (the “Debtor”) will move for voluntary dismissal of Chapter 13 case or involuntary Chapter 7 case (the “Motion”) before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, New York on **October 11, 2018 at 9:30 a.m.**, for an order dismissing Debtor’s Chapter 13 case pursuant to 11 U.S.C. § 1307(b) or Debtor’s Chapter 7 case pursuant to 11 U.S.C. § 707(a) of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the Motion must be made in writing and filed with the Clerk of the Bankruptcy Court, with copy delivered to (i) Hon. Cecelia G. Morris, Chief United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green New York, NY 10004-1408; (ii) Office of the United States Trustee, SDNY, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014; and (iii) Carmine P. Amelio, 60 West 23rd Street, Apt 830, New York, NY 10010, in all cases so as to be received no later than **October 4, 2018 at 4:00 P.M.** Any response must set forth the grounds for and the facts supporting the response and must: (i) identify the response by the name of the responding party, (ii) indicate the hearing date on the upper right hand of the objection, and (iii) bear the caption and case number of this case.

PLEASE TAKE FURTHER NOTICE that if no objections are filed by the Objection Deadline, the Court may enter an order approving the Motion without a hearing.

Dated: September 27, 2018


Carmine P. Amelio, Debtor Pro Se
60 West 23rd Street, Apt 830
New York, NY 10010

Hearing: October 11, 2018
Time: 9:30 AM

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Carmine P. Amelio

Case No. 17-12482-cgm

Debtor.

**DEBTOR'S THIRD MOTION FOR VOLUNTARY DISMISSAL
OF CHAPTER 13 CASE PURSUANT TO 11 U.S.C. 1307(b) OR FIRST MOTION FOR
VOLUNTARY DISMISSAL OF INVOLUNTARY CHAPTER 7 CASE
PURSUANT TO 11 U.S.C. 707(a)**

COMES NOW, Debtor, Carmine P. Amelio, Pro Se, moves this Court of voluntary dismissal of his Chapter 13 Case pursuant to 11 U.S.C. § 1307(b) or voluntary dismissal of his involuntary Chapter 7 case pursuant to 11 U.S.C. § 707(a) of the Bankruptcy Code. Debtor in support thereof states the following:

1. The debtor previously filed Chapter 13 bankruptcy Case Number 17-11167-cgm on April 28, 2017 and that case was dismissed on July 13, 2017.
2. The previous filing was deficient at the time of filing and the court issued notice thereof.
3. Debtor filed a motion to extend time to correct the deficiency within 30 days.
4. Debtor appeared for hearing for his motion, with the completed documents, however the Court dismissed the debtor's case **without an order** on his request for extension of time to correct the deficient filing.
5. On July 13, 2017, the debtor's case was dismissed.
6. The Debtor had no other pending bankruptcy cases in the preceding one-year period.
7. The Debtor did not have any prior case(s) dismissed in the past year for any of the following reasons:

- a. failure to file or amend other required documents without substantial excuse,
 - b. failure to provide adequate protection as ordered by the Court, or
 - c. failure to perform the terms of a plan confirmed by the Court.
8. On September 1, 2017 Debtor the current Chapter 13 bankruptcy case under Title 11 of United States Code. The bankruptcy was docketed as Case Number 17-12482-cgm.
 9. As of the date of this motion all documents have been filed with the courts as required.
 10. The debtor has filed a plan that can be confirmed and has filed Case Number 17-12482-cgm in good faith with intent on seeing it through.
 11. On April 30, 2018, the Chapter 14 Trustee, Krista M. Preuss (the "Trustee"), filed a Motion to Dismiss Debtor's Chapter 13 Case.
 12. On May 10, 2018, debtor filed objection to Trustee's Motion to Dismiss.
 13. On May 17, 2018 a hearing was held on the Trustee's motion to dismiss where the Court sua sponte issued an Order converting debtor's Chapter 13 to Chapter 7.
 14. On May 22, and Order was entered converting case to chapter 7.
 15. On June 5, 2018 the Debtor filed a Motion to Vacate the Order converting to Chapter 7 and Motion to make debtor's Chapter 13 case whole or dismiss debtor's case, which was heard on July 12, 2018 and denied by the Court.
 16. On August 2, 2018 the Debtor filed a Motion to Vacate the Order issued July 19, 2018 denying debtor's motion to vacate the May 22, 2018 Order converting debtor's case to Chapter 7 and to dismiss debtor's case, which is scheduled to be heard on September 6, 2018.

LEGAL ARGUMENT

1. On April 30, 2018, the Trustee filed a motion to dismiss the debtor's Chapter 13 case.

2. Where a Chapter 13 case has not been converted under section 706, 1112 or 1208 of this title, the court shall dismiss a case under this chapter upon request of the Debtor or upon Notice and Hearing by a party in interest.
3. The Court, however, without authority, issued an Order *sua sponte* converting Debtor's Chapter 13 case to a Chapter 7.
4. Since the Court lacked the authority to sua sponte convert the case to chapter 7, the debtor's case should have been dismissed pursuant to debtor's motion to vacate and motion to dismiss filed June 5, 2018 and Trustee's motion to dismiss.
5. The Court did not have the authority to *sua sponte* convert proceedings from Chapter 13 to Chapter 7, since conversions are under the provision of Chapter 13 cited by the judge, section 1307(c), can take place only "on request of a party in interest". Bankr.Code, 11 U.S.C.A. § 1307(c). Also see *Matter of Lozano*, 42 BR 971 - Dist. Court, D. Puerto Rico 1984 emphasis added.
6. In this matter, conversion to chapter 7 was not upon the request of any party in interest, including the merits and arguments raised by the Trustee in her motion to dismiss, thus the judge did not have the authority to sua sponte convert debtor's case to chapter 7.
7. Should debtor's second motion to vacate be denied, then the debtor moves this Court to dismiss his chapter 7 matter pursuant to 11 U.S.C. § 707(a) for the following reasons:
 - a. The debtor does not belong in a chapter 7; it belongs in either chapter 13 or chapter 11.
 - b. The Court unlawfully converted Debtor's case to chapter 7 as punishment, without authority or cause and mis-representations made by the Court by falsely

stating that the debtor had not objected to secured creditor's proof of claims, the debtor was a serial filer due to debtor's brothers having filed their own petitions and that the debtor had improperly listed the amount of the alleged creditors secured debt on his properties as "unknown".

- c. Alleged creditors did not file a response to six (6) of the Debtors Objections to Proof of Claims.
 - d. Debtor's chapter 13 petition was not prejudicial to the alleged creditors and, in addition, the debtor was denied extension of automatic stay beyond 30 days.
 - e. Debtor's chapter 13 case was damaged and compromised by the Court's error to timely docket debtor's pleadings.
 - f. Most of the properties are all underwater and subject to abandonment in Chapter 7, thus, it is in the best interest of the creditors to dismiss the case so alleged creditors can proceed with their State foreclosure actions.
 - g. In *In re Aupperle*, the bankruptcy court granted the debtor's motion to voluntarily dismiss her chapter 7 case. The debtor also stated that she believed that dismissal would not be prejudicial to her creditors because the creditors would be returned to the position they held prior to the bankruptcy filing and most creditors made no prepetition collection efforts.
 - h. In *In re Hull*, the Bankruptcy Court for the Eastern District of New York granted the debtor's motion to dismiss her voluntary chapter 7 case because dismissal would not be prejudicial to her creditors.
8. Debtor reserves his right to amend, add and submit additional evidence, pleadings and affidavits to this motion.

I declare under penalty of perjury that the foregoing is true and correct.

WHEREFORE, the debtor hereby requests that this Court grants voluntary dismissal of his Chapter 13 Case pursuant to 11 U.S.C. 1307(b) or dismiss his chapter 7 matter pursuant to 11 U.S.C. § 707(a)

Date: September 27, 2018

Respectfully Submitted,



Carmine Amelio

Hearing: October 11, 2018
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Carmine P. Amelio

Case No. 17-12482-cgm


Debtor.

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2018, a copy of NOTICE OF DEBTOR'S THIRD MOTION FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE PURSUANT TO 11 U.S.C. 1307(b) OR FIRST MOTION FOR VOLUNTARY DISMISSAL OF INVOLUNTARY CHAPTER 7 CASE PURSUANT TO 11 U.S.C. 707(a), was served electronically and/or by regular United States mail to all interested parties, the Trustee and all creditors on the attached creditor list below.

Date: September 27, 2018

Respectfully Submitted,



Carmine Amelio
60 West 23rd Street, Apt 830
New York, NY 10010

Via: U.S. Mail
Attached list

SERVICE LIST FOR CASE NUMBER 17-12482-cgm

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Eureka, CA 95501-0305

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